

## Message Text

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ACTION EUR-12

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-----091814Z 112635 /53

P R 091635Z FEB 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC PRIORITY 5468  
INFO USMISSION USBERLIN  
USMISSION EC BRUSSELS  
USMISSION NATO BRUSSELS  
AMEMBASSY BERLIN  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 01 OF 05 BONN 02447

E.O. 11652: GDS  
TAGS: PFOR, PGOV, EEC, WB, GW, US, UK, FR, UR  
SUBJECT: BERLIN AND THE EC: SOVIET PROTEST OF  
NOVEMBER 16

REFS: (A) STATE 23040; (B) BONN 1547; (C) BONN 412  
(D) 76 BONN 21268; (E) 76 MOSCOW 18075

BEGIN SUMMARY: TRANSMITTED BELOW IS THE TEXT OF A  
REVISED BONN GROUP DRAFT REPLY TO THE SOVIET PROTEST  
OF NOVEMBER 16 CONCERNING THE REPRESENTATION OF BERLIN  
IN THE EUROPEAN PARLIAMENT. ACTION REQUESTED: DEPART-  
MENT'S APPROVAL OF THE REVISED DRAFT AND VIEWS ON  
TIMING OF DELIVERY. END SUMMARY

1. THE BONN GROUP HAS ENDEAVORED TO RECONCILE INSTRUC-  
TIONS FROM LONDON, PARIS, AND THE DEPARTMENT (REF A)  
AND IN ITS FEBRUARY 8 MEETING REACHED AD REF AGREEMENT  
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ON THE FOLLOWING REVISED REPLY TO THE SOVIET PROTEST  
OF NOVEMBER 16 (REF E); COMMENTS ON THE REVISIONS IN  
THE DRAFT REPLY FOLLOW THE TEXT:

BEGIN TEXT

A. THE GOVERNMENT OF (BLANK), IN CONSULTATION

WITH THE GOVERNMENTS OF (BLANK), HAS CAREFULLY CONSIDERED THE STATEMENT OF THE MINISTRY OF FOREIGN AFFAIRS OF THE USSR OF 16 NOVEMBER 1976 AND HAS INSTRUCTED ME TO STATE THE FOLLOWING.

B. THE UNITED STATES (FRENCH, UK) GOVERNMENT DOES NOT ACCEPT THE ALLEGATIONS IN THE SOVIET NOTE OF 16 NOVEMBER CONCERNING THE ORIGIN AND EXTENT OF ALLIED RIGHTS AND RESPONSIBILITIES IN BERLIN AND DOES NOT CONSIDER IT NECESSARY TO REITERATE ITS WELL-KNOWN POSITION ON THIS SUBJECT.

C. THE (BLANK) GOVERNMENT RECALLS THAT, WHEN THE AUTHORITIES OF THE THREE POWERS APPROVED THE EXTENSION TO THE WSB OF THE TREATY OF 1957 AND OF OTHER EC CONSTITUTIVE TREATIES, THE ALLIED KOMMANDATURA, IN CONFORMITY WITH THE ESTABLISHED PROCEDURES, TOOK THE NECESSARY STEPS TO ENSURE THAT THEIR APPLICATION IN THE WSB DID NOT AFFECT ALLIED RIGHTS AND RESPONSIBILITIES, INCLUDING THOSE WHICH CONCERN MATTERS OF SECURITY AND STATUS. THE APPLICATION OF THESE TREATIES IN THE WSB UNDER THESE CONDITIONS IS IN NO WAY INCOMPATIBLE WITH THE STATUS OF BERLIN AND IT IS ERRONEOUS TO DESCRIBE IT AS ILLEGAL. THEREFORE, THE QUESTION OF WHETHER THE QA RETROACTIVELY SANCTIONED THE EXTENSION OF THESE TREATIES TO THE WSB DOES NOT ARISE.

D. TO THE EXTEND THAT THE SOVIET STATEMENT CONCERNS THE PROPOSED EXTENSION TO THE WSB OF THE COUNCIL

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ACT OF 20 SEPTEMBER 1976 CONCERNING THE ELECTION OF REPRESENTATIVES OF THE EUROPEAN ASSEMBLY BY DIRECT

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INFO USMISSION USBERLIN  
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USMISSION NATO BRUSSELS  
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UNIVERSAL SUFFRAGE, THE (BLANK) GOVERNMENT RECALLS  
AND CONFIRMS THE TERMS OF ITS COMMUNICATION OF  
20 SEPTEMBER 1976. THE GOVERNMENTS OF FRANCE, THE  
UNITED STATES AND THE UNITED KINGDOM HAVE GIVEN THEIR  
AGREEMENT TO THE EXTENSION TO BERLIN OF THE COUNCIL  
ACT OF 20 SEPTEMBER 1976; THEY HAVE TAKEN THE  
NECESSARY MEASURES, DESCRIBED IN THEIR STATEMENT OF  
20 SEPTEMBER 1976, TO ENSURE THAT THE PROVISIONS OF  
THAT ACT ARE APPLIED IN THE WSB IN A WAY FULLY  
CONSISTENT WITH ALLIED RIGHTS AND RESPONSIBILITIES.  
THEY CONFIRM THAT THE CONTINUED PARTICIPATION OF  
REPRESENTATIVES FROM BERLIN IN THE EUROPEAN ASSEMBLY  
CANNOT, IN SUCH CIRCUMSTANCES, CONSTITUTE A VIOLATION  
OF THE QUADRIPARTITE AGREEMENT OF 3 SEPTEMBER 1971.

E. THE WESTERN SECTORS OF BERLIN WILL CONTINUE TO  
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BE INCLUDED IN THE AREA OF APPLICATION OF THE CONSTI-  
TUTIVE TREATIES OF THE EC INsofar AS THIS IS COMPATIBLE  
WITH ALLIED RIGHTS AND RESPONSIBILITIES. SUCH  
INCLUSION CANNOT AND WILL NOT HAVE THE EFFECT OF  
CONFERRING ON THE EUROPEAN COMMUNITY ANY PART OF THE  
SUPREME AUTHORITY EXERCISED BY THE THREE POWERS IN THE  
WESTERN SECTORS OF BERLIN. SUCH INCLUSION IS  
FULLY CONSISTENT WITH THE QUADRIPARTITE AGREEMENT,  
INCLUDING THE PROVISION THAT THE TIES BETWEEN THE WSB  
AND THE FRG WILL BE MAINTAINED AND DEVELOPED, TAKING  
INTO ACCOUNT THAT THESE SECTORS CONTINUE NOT TO BE  
A CONSTITUENT PART OF THE FRG AND NOT TO BE GOVERNED  
BY IT.

F. THE (BLANK) GOVERNMENT CONSIDERS IT UNNECESSARY TO COMMENT ON HYPOTHESES CONCERNING THE BUILDING OF A EUROPEAN UNION. EC DEVELOPMENTS WILL CONTINUE TO BE REVIEWED BY THE THREE POWERS IN THE EXERCISE OF THEIR SUPREME AUTHORITY, IN ORDER TO ENSURE THAT NO SUCH DEVELOPMENT AFFECTS THE STATUS OF BERLIN.

G. IN THESE CIRCUMSTANCES, THE GOVERNMENT OF (BLANK) MUST REJECT AS TOTALLY UNWARRANTED THE REFERENCE TO PROTECTIVE ACTIONS CONTAINED IN THE SOVIET STATEMENT.

END TEXT

2. IN PRELIMINARY DISCUSSION, THE US REP DREW FROM THE INITIAL PORTION OF THE DEPARTMENT'S INSTRUCTIONS TO EXPRESS A STRONG PREFERENCE FOR A SHORTER REPLY THAN THE BONN GROUP DRAFT OF JANUARY 26 (REF B), ADDING THAT THE DEPARTMENT CONTINUE TO BELIEVE THAT THE DRAFT OF DECEMBER 17 (REFS C AND D) PROVIDES A REASONABLE RESPONSE TO THE SOVIET PROTEST.

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3. FRENCH REP (BOISSIEU) STATED THAT PARIS ALSO PREFERRED THE DECEMBER 17 DRAFT. IN PARTICULAR, PARIS WAS UNWILLING TO ACCEPT PARA C THE JANUARY 26 DRAFT, BELIEVING, AS DID THE DEPARTMENT, THAT IT WAS NOT ONLY DIFFICULT TO GIVE A PRECISE DEFINITION OF THE EXTENT OF ALLIED RIGHTS AND RESPONSIBILITIES IN WEST BERLIN BUT ALSO UNWISE TO ATTEMPT TO DO SO AT THE PRESENT TIME.

4. UK REP (HITCH) REPORTED THAT LONDON ALSO WAS UNWILLING TO ACCEPT PARA C OF THE JANUARY 26 DRAFT. ALTHOUGH IT WAS THE FCO WHICH HAD CALLED FOR A NEW DRAFT WHICH WOULD ANSWER SPECIFICALLY THE SOVIET CONTENTION THAT THE USSR HAD NEVER RECOGNIZED THE EXTENSION

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INFO USMISSION USBERLIN  
USMISSION EC BRUSSELS  
USMISSION NATO BRUSSELS  
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OF THE EC TREATIES TO BERLIN AND THAT THE QA DID NOT  
RETROACTIVELY SANCTION THE APPLICATION OF THE TREATIES  
TO BERLIN, THE FCO HAD NOT SUGGESTED LANGUAGE FOR  
DOING SO. IN THE OPINION OF THE FCO, THE BONN GROUP  
COLLECTIVELY HAD FAILED MISERABLY IN MEETING THIS  
CHALLENGE, WHICH IT HAD SOUGHT TO DO BY EXPLAINING  
THAT THE SUPREME AUTHORITY OF THE THREE POWERS IN  
THE WSB OBIATED THE NEED FOR SOVIET RECOGNITION OF  
THE EXTENSION OF THE EC TREATIES.

5. AGREEMENT TO DROP PARA C FROM THE JANUARY 26 DRAFT  
WAS THUS AUTOMATIC IN VIEW OF THE INSTRUCTIONS FROM  
ALL THREE CAPITALS AND THE US REP DID NOT UTILIZE THE  
DEPARTMENT'S SUGGESTED FALLBACK WORDING FOR THAT PARA  
(PARA 2A, REF A).

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6. BECAUSE PARA B OF THE JANUARY 26 DRAFT, WHICH  
SOUGHT TO DEFINE THE ORIGIN OF ALLIED RIGHTS, WAS OF  
LITTLE MEANING WITHOUT THE FOLLOW-ON PARA ON THE  
EXTENT OF THOSE RIGHTS, THAT PARA WAS DROPPED AS WELL.  
FOR THE NEW PARA B, THEREFORE, THE BONN GROUP RETURNED  
TO THE FORMULATION IN THE ORIGINAL DECEMBER 17 DRAFT,  
WHICH SIMPLY REJECTS THE SOVIET ALLEGATIONS ON THE  
ORIGIN AND EXTENT OF ALLIED RIGHTS AND RESPONSIBILITIES  
WITHOUT STATING WHY.

7. THE NEW PARA C IS THE SAME AS PARA D OF THE JANUARY 26 DRAFT MINUS THE FINAL TWO SENTENCES. THE FINAL REFERENCE IN THAT PARA TO THE "EXISTING SITUATION" WOULD HAVE HAD TO BE DROPPED BECAUSE OF THE DEPARTMENT'S INSTRUCTIONS. IN ADDITION, HOWEVER, THE FRENCH REP ARGUED FOR DELETION OF THE ENTIRE TWO SENTENCES OF THE EARLIER DRAFT BECAUSE OF THE QA'S VIEW THAT THESE WERE INCONSISTENT WITH THE EARLIER ARGUMENTATION IN THE PARA. THE FIRST PART OF THE PARA EXPLAINS WHY THE SOVIET STATEMENT ABOUT THE QA SANCTIONING THE EXTENSION OF THE EC TREATIES TO BERLIN WAS IRRELEVANT, SINCE THAT EXTENSION WAS LEGAL FROM THE BEGINNING. PARIS THOUGHT IT WAS INCONSISTENT IN THIS WAY TO ARGUE, IN EFFECT, THAT THE QA WAS IRRELEVANT TO THE SITUATION, AND THEN TO GO ON TO SUGGEST THAT THE QA RATIFIED THE APPLICATION OF THE EC TREATIES TO BERLIN. THE FRG, US AND UK REPS ALL BELIEVED THAT THIS WAS NOT SO MUCH AN INCONSISTENCY AS AN ADDITIONAL ARGUMENT SUPPORTING THE WESTERN POSITION, BUT IN THE END THEY AGREED TO DROP THE FINAL TWO SENTENCES. (COMMENT: GIVEN LONDON'S CONTINUING BELIEF THAT THE EXISTING SITUATION ARGUMENT IS OUR BEST DEFENSE, WE ARE NOT CERTAIN THAT LONDON WILL ACQUIESCE IN REMOVAL OF ALL REFERENCE TO THAT ARGUMENT).

8. THE NEW PARA D IS THE SAME AS PARA E IN THE  
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JANUARY 26 DRAFT WITH ONE AMENDMENT. THE UK ASKED THAT THE SECOND SENTENCE OF THAT PARA BE AMENDED SO THAT THE SECOND HALF, INSTEAD OF READING THAT THE THREE POWERS HAD TAKEN STEPS TO ENSURE THAT THE PROVISIONS OF THE EC ACT ON DIRECT ELECTIONS "DO NOT AFFECT THE STATUS OF THE CITY," WOULD READ THAT THEY HAD ENSURED THAT "THE PROVISIONS OF THAT ACT ARE APPLIED IN THE WSB IN A WAY FULLY CONSISTENT WITH ALLIED RIGHTS AND RESPONSIBILITIES."

9. THE FCO ALSO REQUESTED AN ANALOGOUS CHANGE IN NEW PARA F, SO THAT IT WOULD ALSO READ THAT THE THREE POWERS WILL CONTINUE TO REVIEW ALL EC DEVELOPMENTS "IN ORDER TO ENSURE THAT NO SUCH DEVELOPMENT AFFECTS ALLIED RIGHTS AND RESPONSIBILITIES" (INSTEAD OF "...AFFECTS THE STATUS OF BERLIN"). HITCH WAS UNABLE TO EXPLAIN THE REASONING BEHIND THESE TWO REQUEST OTHER THAN TO STATE THAT HE WAS AWARE FROM DISCUSSIONS IN BRUSSELS AND SUBSEQUENTLY THAT HIBBERT BELIEVED OUR FOCUS SHOULD BE MORE ON PRESERVING ALLIED RIGHTS AND RESPONSIBILITIES, AND NOT ON THE STATUS OF BERLIN.

HE WAS UNABLE TO ANSWER QUESTION AS TO WHETHER, IN THIS CONTEXT, HIBBERT INTENDED "ALLIED" TO MEAN "THREE POWER" OR "QUADRIPARTITE" RIGHTS AND RESPONSIBILITIES.

10. THE FRG, US AND FRENCH REPS ALL HAD RESERVATIONS ABOUT ACCEPTING THE AMENDMENT OF THESE TWO PASSAGES, FOR TWO REASONS. FIRST OF ALL, THE LIMITATION STATED IN THE QA ON EXTENSION OF TREATIES TO BERLIN IS THAT MATTERS OF STATUS AND SECURITY SHOULD NOT BE AFFECTED. SECONDLY, THE THRUST OF THE SOVIET PROTEST WAS THAT

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EC DEVELOPMENTS WERE AFFECTING THE STATUS OF BERLIN. FOR BOTH REASONS, THEY THOUGHT IT MISSED THE POINT TO STATE THAT WE WERE ENSURING THAT ALLIED RIGHTS AND RESPONSIBILITIES, RATHER THAN MATTERS OF STATUS, WERE NOT BEING AFFECTED.

11. THEY RECOGNIZED, HOWEVER, THAT THERE WAS MERIT TO BOTH ARGUMENTS, AND, INDEED, THAT BOTH CRITERIA ARE USED IN PARA C OF THE DRAFT. AS A COMPROMISE, THEY AGREED THEREFORE TO ACCEPT THE UK AMENDMENT TO PARA D BUT TO RETAIN THE ORIGINAL WORDING IN PARA

F. AS THE LATTER IS ONE OF THE MOST IMPORTANT PASSAGES IN THE REPLY, US, FRG AND FRENCH REPS ALL INSISTED THAT IT SHOULD CONTINUE TO STATE THAT THE STATUS OF BERLIN WOULD NOT BE AFFECTED BY EC DEVELOPMENTS.

12. THE FINAL SENTENCE OF PARA E HAS BEEN CHANGED AT  
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BRITISH REQUEST. HIBBERT THOUGHT THAT THE SENTENCE AS ORIGINALLY WORDED (PARA F OF THE JANUARY 26 DRAFT) WAS OBJECTIONABLE ON TWO COUNTS: THE FIRST HALF OF THE SENTENCE WAS "UNNECESSARILY PROVOCATIVE", AND THE SECOND HALF WAS "UNNECESSARILY DEFENSIVE". HIBBERT THEREFORE REQUESTED THAT THE SENTENCE MERELY QUOTE THE QA PROVISION ON THE TIES.

13. BOISSIEU OBJECTED STRENUOUSLY TO THIS CHANGE AND READ FROM A LENGTHY INSTRUCTION FROM PARIS ON THE SUBJECT. ACCORDING TO HIS INSTRUCTION, WHICH HAD FORMED THE BASIS FOR THE EARLIER WORDING OF THE SENTENCE IN QUESTION, THIS WAS THE ONLY CONCRETE DECISION ON WORDING OF THE ALLIED REPLY TAKEN BY SENIOR OFFICIALS IN THEIR RESTRICTED SESSION ON THE AFTERNOON OF DECEMBER 8 IN BRUSSELS. BOISSIEU THOUGHT THAT THE CHANGED WORDING AS REQUESTED BY HIBBERT WOULD CONSIDERABLY WATER DOWN WHAT SENIOR OFFICIALS HAD AGREED TO SAY. BECAUSE HIBBERT, HOWEVER, WAS ALSO ONE OF THE PARTICIPANTS IN THE DECEMBER 8 MEETING, AND BECAUSE NO OTHER REPS HAD PRECISE REPORTS ON WHAT HAD BEEN DECIDED THERE, THEY CONCLUDED IN THE END THAT THE ONLY WAY TO APPROACH THE PROBLEM WAS TO REPORT HIBBERT'S DESIRED AMENDMENT AND OBTAIN REACTIONS FROM CAPITALS. THE US REP EXPRESSED THE PERSONAL OPINION THAT, WHILE THE EARLIER WORDING WAS PREFERABLE, THE PROPOSED BRITISH CHANGE WOULD NEVERTHELESS GET ACROSS THE MESSAGE TO THE SOVIETS THAT WE CONSIDER BERLIN'S INCLUSION IN THE EC AREA AS ONE OF THE TIES BETWEEN THE WSB AND THE FRG.

14. THE REVISED WORDING OF THE FINAL PARA WAS ALSO BASED ON A UK REQUEST. HIBBERT THOUGHT THAT THE REJECTION OF SOVIET THREATS SHOULD NOT BE LIMITED TO QUESTIONS OF WHETHER SOVIET RIGHTS WERE AFFECTED OR THE PROVISIONS OF THE QA WERE BEING OBSERVED BUT  
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SHOULD BE CAST IN GENERAL TERMS. OTHER REPS ACCEPTED THIS CHANGE WITH SOME UNHAPPINESS BECAUSE THE PREVIOUS TEXT HAD BEEN CAREFULLY WORDED TO MEET THE SPECIFIC TERMS OF THE SOVIET THREAT AS CONTAINED IN THE FINAL PARA OF THE NOVEMBER 16 PROTEST (REF E). AS THE DEPARTMENT HAD ALSO WANTED THAT PARA REVISED SO THAT IT WOULD NO LONGER REFER SPECIFICALLY TO THE SOVIET COMPLAINT ABOUT OBSERVING THE QA, THE US REP IN THE END JOINED THE CONSENSUS ON AN AD REF BASIS FOR ACCEPT-

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ING THE BRITISH PROPOSAL.

15. TIMING: HITCH STATED THAT HE HAD NO INSTRUCTIONS ON THE SUBJECT BUT THOUGHT WE SHOULD CONSIDER ONCE MORE THE QUESTION OF WHEN THE REPLY SHOULD BE DELIVERED. HE NOTED THAT THE BRITISH EMBASSY IN MOSCOW HAD COMMENTED THAT THE SEPTEMBER 20 ALLIED STATEMENT STILL STANDS AS AN ADEQUATE EXPRESSION OF OUR INTENTIONS CONCERNING BERLIN'S PARTICIPATION

IN THE EUROPEAN PARLIAMENT AND HAD SUGGESTED THAT IT MIGHT BE PREFERABLE TO DELAY FURTHER THE REPLY TO THE NOVEMBER 16 PROTEST UNTIL SHORTLY BEFORE FEDERAL LEGISLATION ON DIRECT ELECTIONS IS LAUNCHED IN THE BUNDESTAG. ANSWERING NOW WOULD GIVE THE SOVIETS TIME FOR STILL ANOTHER PROTEST EVEN BEFORE THE LEGISLATION HAD BEEN INTRODUCED.

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16. HENZE (FRG) POINTED OUT THAT THIS WOULD PROBABLY MEAN A DELAY OF ANOTHER TWO MONTHS AT LEAST. HE RECALLED THAT OTHER OUTSTANDING REPLIES WERE DEPENDENT ON OUR REPLY TO THE NOVEMBER 16 PROTEST, SUCH AS THE COMPLAINT IN BERLIN ABOUT THE MEETING OF THE EC/ GREECE PARLIAMENTARY COMMITTEE AND THE SOVIET PROTEST IN IMCO. HENZE THUS THOUGHT IT WOULD BE PREFERABLE FOR THE ALLIES TO DELIVER THE REPLY AS SOON AS THE TEXT WAS AGREED. BOISSIEU ALSO EXPRESSED THE VIEW THAT WE SHOULD ANSWER AS QUICKLY AS POSSIBLE. WE WERE APPROACHING THE TIME WHERE IT WOULD BE USELESS TO ANSWER AT ALL. LONG DELAYS SUGGEST TO THE SOVIETS EITHER THAT THEIR PROTEST HAS CAUSED US REAL DIFFICULTIES OR ELSE THAT WE ARE NOT TAKING SOVIET VIEWS SERIOUSLY. THE US REP NOTED THAT US INSTRUCTIONS STILL CALL FOR DELIVERING THE REPLY AS QUICKLY AS POSSIBLE.

17. ALL REPS AGREED TO QUERY CAPITALS FOR CURRENT VIEWS ON THE TIMING ISSUE.

18. ACTION REQUESTED: THAT THE DEPARTMENT APPROVE THE TEXT IN PARA 1 ABOVE AND PROVIDE GUIDANCE ON THE TIMING OF THE DELIVERY OF THE ALLIED REPLY.  
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## Message Attributes

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